

October 20, 2004

Via Electronic Filing

Hon. Michael K. Powell, Chairman  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: *Ex Parte* Presentation: Improving Public Safety Communications in  
the 800 MHz Band  
WT Docket No. 02-55**

Dear Chairman Powell:

The purpose of this letter is to express the joint opinion of the United Telecom Council (UTC) and the Edison Electric Institute (EEI) on behalf of their many critical infrastructure industry members that will be impacted by the FCC's decision in the above-referenced matter. UTC, EEI and the utility community have been active in this major, complicated proceeding since its inception, and take this opportunity to comment on recent filings by Nextel.

On August 6, 2004, the Commission issued the *Report and Order* discussed herein, adopted on July 8, Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, FCC 04-168. The decision has not yet been published in the Federal Register, and thus the normal period for formally seeking reconsideration has not yet begun. Meanwhile, in a series of *ex parte* meetings with the Commission, Nextel – by means of request for technical correction – has asked the Commission for major substantive changes to the obligations imposed on it by the FCC's *Report and Order*.

In particular, Nextel seeks to weaken the interference mitigation rules which the Commission indicated would be in effect during the rebanding process. Nextel alleges that it will not be able to protect incumbent high-site radio systems from interference using the adopted signal thresholds, and (in combination with others of its recent filings in the docket) also appears to be suggesting that interference mitigation should not begin at all until many years after the Commission's decision. Nextel also seeks to reduce dramatically the compensation it must pay for the spectrum it obtains, by asserting that the spectrum it will vacate is worth over \$2 billion – far more than the \$1.6 billion the Commission determined.

We strongly agree with the FCC's decision that updated technical standards are needed in the 806-824/851-869 MHz band throughout this process and beyond, to ensure that harmful interference does not threaten the safe operation of communications systems used by critical infrastructure providers and other emergency service licensees. UTC and EEI therefore urge the Commission not to

weaken its new technical rules for the 800 MHz band. Rather, the Commission should work to ensure that *no* licensee, regardless of type, is subject to unacceptable interference, either during the rebanding process or afterward.

UTC and EEI also remain extremely concerned about the adequacy of funding available for the rebanding process. UTC and EEI urge the FCC not to weaken any requirement that Nextel provide full funding of the rebanding process. UTC and EEI member entities have repeatedly expressed their concerns over the inevitable disruption of critical communications during the rebanding process; some affected utility systems cover multiple states, and many are publicly owned. The costs and the difficulties of this process will be enormous.

Mr. Chairman, we share the Commission's commitment to cure the interference problems plaguing traditional public safety agencies and critical infrastructure systems. While our members do not agree wholeheartedly with the framework chosen by the Commission for this effort, we appreciate the many extremely difficult decisions that are included within the *Report and Order*. Critical infrastructure entities and the associations that support them will make their requests for reconsideration by appropriate means.

We continue to maintain that the 800 MHz rebanding effort requires both adequate funding and the appropriate use and management of licensed spectrum. Nextel, on the other hand, continues to push against the responsibilities the FCC placed upon it in return for the reward Nextel requested, to solve the problems Nextel generally caused.

UTC and EEI believe that it is crucial for all interested parties to have a complete opportunity to address fully – in a public forum – any major changes to the FCC's framework adopted in this proceeding. Clearly it is not appropriate for the Commission to make such changes through a technical correction before the *Report and Order* has even been published. Due process, as well as the Administrative Procedure Act, demands that all interested parties to this major proceeding have an opportunity to address, on the record, the significant, substantive changes requested by Nextel. Given the length of time that the order has remained unpublished and the lack of procedural rules which apply during this period, UTC and EEI believe it would be highly inappropriate for the Commission to act on Nextel's request in this context. UTC and EEI urge the Commission to reject Nextel's pending request for changes to the Commission's framework in this docket.

Pursuant to Section 1.1206 of the Commission's Rules and Regulations, 47 C.F.R. § 1.1206, a copy of this letter is being filed with the Office of the Secretary. If there are any questions concerning this matter, please do not hesitate to contact UTC or EEI directly.

Respectfully submitted,

**United Telecom Council**


By:



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Vice President & General Counsel

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By:



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